

MONTANA LEGISLATIVE HISTORY

Chapter 483 19 95

Bill H _____ S 98 Original bill & history C

H. Committee on State Admin

Hearing Date(s) Mar 08 ✓ C

Mar 20 ✓ C

_____ C

_____ C

Date Out Mar 20 ✓ C

S. Committee on State Admin

Hearing Date(s) Jan 17 ✓ C

Feb 18 ✓ C

_____ C

_____ C

Feb 20 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1/19	HEARING		
1/24	TABLED IN COMMITTEE		
1/28	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING	27	16
1/30	2ND READING PASSED AS AMENDED	29	20
1/31	3RD READING PASSED	26	22
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/15	HEARING		
2/16	COMMITTEE REPORT—BILL CONCURRED		
2/21	2ND READING CONCURRED	97	0
2/22	3RD READING CONCURRED	97	2
	RETURNED TO SENATE		
2/28	SIGNED BY PRESIDENT		
3/02	SIGNED BY SPEAKER		
3/02	TRANSMITTED TO GOVERNOR		
3/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 73		
	EFFECTIVE DATE: 10/01/95		

SB 97 INTRODUCED BY FOSTER
ALLOW AN INCOME TAX CREDIT FOR HOUSEHOLD AND DEPENDENT CARE
SERVICES BASED ON INTERNAL REVENUE CODE

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO TAXATION		
1/12	FISCAL NOTE REQUESTED		
1/17	FISCAL NOTE RECEIVED		
1/17	FISCAL NOTE PRINTED		
1/25	HEARING		
3/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/25	2ND READING PASSED	48	0
3/27	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/28	FIRST READING		
3/28	REFERRED TO TAXATION		
3/31	HEARING		
4/04	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 98 INTRODUCED BY FOSTER
PROMOTE CAMPAIGN REFORM AND INTEGRITY AND CREATE CIVIL
OFFENSE OF POLITICAL LIBEL

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO STATE ADMINISTRATION		
1/17	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	49	1
2/22	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO STATE ADMINISTRATION		
3/08	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	90	7
3/31	3RD READING CONCURRED	94	4

	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	49	1
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 483		
	EFFECTIVE DATE: 10/01/95		

SB 99 INTRODUCED BY KEATING, ET AL.

ALLOW BOARD OF COUNTY COMMISSIONERS TO DETERMINE SITE FOR
AUCTION SALE OF REAL OR PERSONAL PROPERTY VALUED IN EXCESS
OF \$2,500

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO LOCAL GOVERNMENT		
1/17	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/19	2ND READING PASSED	50	0
1/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO LOCAL GOVERNMENT		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL CONCURRED		
2/21	2ND READING CONCURRED	98	1
2/22	3RD READING CONCURRED	99	0
	RETURNED TO SENATE		
2/28	SIGNED BY PRESIDENT		
3/02	SIGNED BY SPEAKER		
3/02	TRANSMITTED TO GOVERNOR		
3/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 74		
	EFFECTIVE DATE: 10/01/95		

SB 100 INTRODUCED BY BECK, ET AL.

AUTHORIZE LOANS TO LOCAL GOVERNMENT FOR BUSINESSES
ESTIMATED TO EMPLOY AT LEAST 2,000 PEOPLE

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO BUSINESS & INDUSTRY		
1/12	FISCAL NOTE REQUESTED		
1/12	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
1/13	HEARING		
1/13	COMMITTEE REPORT—BILL PASSED		
1/16	2ND READING PASSED AS AMENDED	49	1
1/16	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
1/16	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
1/17	FIRST READING		
1/17	REFERRED TO BUSINESS & LABOR		
1/18	HEARING		
1/19	COMMITTEE REPORT—BILL CONCURRED		
1/19	ON MOTION RULES SUSPENDED TO ALLOW 2ND & 3RD READING OF BILL THIS DAY		

SEN. DON HARGROVE asked Senator Nelson if there had been consideration of last minute filing by an opponent simply to confuse the issue of who is actually on file as a write-in candidate. SEN. NELSON stated that since write-in candidates have to file no later than 15 days prior to the election, it wouldn't be a last minute problem.

SEN. VIVIAN BROOKE asked Senator Nelson to verify the intent of SB94 is to clarify that, for a write-in election, the writing in of a last name only is not sufficient to be counted.

SEN. NELSON answered that that is exactly what needs to be clarified in the law.

SEN. JEFF WELDON asked Senator Nelson if a voter had written in "Mr. Marsh" would that vote have counted. SEN. NELSON answered no, "Mr. Marsh" would not be counted.

CHAIRMAN ETHEL HARDING commented that in her area, a candidate who was not generally known by his actual name filed under his actual name plus his nickname so that all votes would be counted.

Closing by Sponsor:

SEN. NELSON stated there is clearly a need for SB94.

HEARING ON SB98

Opening Statement by Sponsor:

SEN. MIKE FOSTER, Senate District 20, Townsend, stated that he refers to SB98 as the "campaign reform and integrity act", and it is a constituent bill. SEN. FOSTER explained the new items on page 1 regarding current office holders resigning in order to become a candidate for another office. SEN. FOSTER also explained the exceptions to this new provision.

SEN. FOSTER discussed the change on page 2, lines 2-3. SB98 would discontinue use of a list of registered voters as a jury selection listing and implement the use of a list of licensed drivers (18 and over) in the county. Another option would be to continue using the list of registered voters but add a five-year exemption after jury duty is served once.

SEN. FOSTER stated that the third issue on page 2, line 20, changes the date of the primary election from June to September. The reason for this change comes from complaints from constituents regarding the length and expense of campaigns.

SEN. FOSTER stated he believes this change will also increase voter interest in the primary election.

SEN. FOSTER explained the next change proposed by SB98 which is to allow voters to vote a split ticket in the primary. This aspect also needs to be coordinated with SB30 which was introduced by Senator Gage. **SEN. FOSTER** stated this was also a common complaint from constituents.

SEN. FOSTER discussed the last change on page 4, lines 15 - 18 which states that during the last 10 days of a campaign, a candidate cannot raise a false or misleading voting record issue against an opponent. A violator is subject to a civil penalty up to \$1,000. This will address the problem of the last minute sneak attack. **SEN. FOSTER** said the language in SB98 doesn't necessarily take care of this the way he had intended, but it's the best that could be done while still considering the First Amendment. **SEN. FOSTER** handed out excerpts from minutes of the Citizen's Task Force on Political Practices (**EXHIBIT 1**). This Task Force was assembled by Ed Argenbright, the Commissioner of Political Practices. A presentation was made by Connie Erickson of the Legislative Council at that Task Force meeting.

SEN. FOSTER handed out a memo of her presentation (**EXHIBIT 2**).

SEN. FOSTER explained that Ms. Erickson's presentation illustrates how other states are attempting to deal with campaign falsity issues. **SEN. FOSTER** said his main concern is the lack of time available to respond to last-minute attacks by an opponent.

Proponents' Testimony:

Deborah Smith, Montana Common Cause, said her group supports section 7 of SB98 only. They support the objectives of SB98 to prohibit last-minute attacks, but believe the language in SB98 is too vague to accomplish this purpose as Senator Foster himself had stated. **Ms. Smith** stated that First Amendment concerns reflected in SB98 do not cover libel or slander. **Ms. Smith** stated Common Cause would like to see an amendment to SB98 regarding false and misleading representations of a voting record to clarify that means any public voting record. **Ms. Smith** also stated the Commissioner of Political Practices needs more clear direction to determine what is false or misleading. **Ms. Smith** also expressed concern that the proposed language only regulates the candidate making statements and would not allow the Commissioner to impose a civil penalty on any person or group who makes or publishes statements on behalf of a candidate that are false or misleading about an opposing candidate. Common Cause would be happy to work with Senator Foster to make SB98 a more effective deterrent. **Ms. Smith** added that she believes it is not just the last 10 days of a campaign when sneak attacks cause problems.

Laurie Koutnik, Executive Director of the Christian Coalition of Montana, stated her appreciation to Senator Foster and work done to address these election concerns. **Ms. Koutnik** stated support for changing the jury selection listing as well as the ability to vote a split ticket in the primary.

Dick Motta, citizen, stated he would like to extend some of the provisions of SB98 to school elections. **Mr. Motta** described a situation in Missoula where the taxpayers voted down a particular ballot issue in April. **Mr. Motta** said after that ballot issue was defeated, the school board came back with the same mill levy and intimidated the school teachers, students, and parents so the ballot issue was passed. **Mr. Motta** said this intimidation is a total violation of the voting process and has no place in our society. **Mr. Motta** said intimidation tactics are used in each of these school elections because the school board is allowed four opportunities to pass a ballot issue. **Mr. Motta** also said there should not be any use of school funds to support or oppose a ballot issue. **Mr. Motta** stated he would like there to be only one school election per year and that it be held during the primary in June. **Mr. Motta** stated if a school ballot issue passed or failed in June, the schools could react and prepare their budgets to be submitted to the county superintendents by September 1. **CHAIRMAN HARDING** interjected that **Mr. Motta's** testimony does not seem to be associated with SB98 and to include these issues would change the intent of SB98. **David Niss** stated that the title includes broad phrases such as "generally revising the laws concerning candidates, electors, and elections." **Mr. Motta** said he thinks all elections should be taken into consideration and timing of school ballot issues should be consistent with the primary to minimize the number of elections we have a year. **Mr. Motta** also stated he believes any instance where a complaint is filed should include a response from the Commissioner of Political Practices within 30 days.

Opponents' Testimony:

Robert Throssel, Montana Association of Clerk & Records, stated if the primary election was held in September, it would make it impossible to conduct a general election in November as the current laws are written. **Mr. Throssel** said Rep. Grinde introduced a similar bill in the House that would have moved the primary from June to August. Even an August date would cause timing problems for the Clerk & Records. Rep. Grinde's bill has been tabled by the House Local Government Committee. Rep. Tropila is also planning to introduce a bill that would move the primary and school election together on the same date sometime in spring. **Mr. Throssel** said there are a number of statutes that involve timing of the various issues involved with elections, and the coordination of all new bills with relevant statutes is an involved task.

{Tape: 1; Side: B; Approx. Counter: 41.5}

Questions From Committee Members and Responses:

SEN. MESAROS asked Senator Foster if other parties identified as representing a candidate should also be held responsible for

last-minute attacks rather than just the candidate. **SEN. FOSTER** agreed that it is not always just the candidate, but perhaps it could be an organization. **SEN. MESAROS** asked Senator Foster if he would recommend amendments for section 7. **SEN. FOSTER** said that he would work on language to amend section 7 of SB98.

SEN. MESAROS asked Robert Throssel what new primary date would allow adequate time considering existing law. **Mr. Throssel** said the entire general timeline that's built into current statute would need to be reviewed to come up with a new primary date.

SEN. BROOKE stated she feels the provision in lines 27 and 28 on page 1 is redundant since a candidate cannot file for two offices at one time. **SEN. FOSTER** responded that the language in lines 27 and 28 is essential because, for example, if a Representative decided to run for the State Senate, without this exception, they would have to resign from their position as Representative immediately. This provision would allow them to finish the term as Representative.

SEN. BROOKE asked Senator Foster if there was some way to have section 7 address situations where a last-minute attack is made by an anonymous party. **SEN. FOSTER** referred to Ms. Koutnik's testimony that someone can always figure out a way to get around the law if they want to and that SB98 is not a cure-all.

SEN. MACK COLE asked Senator Foster if he thought having the Task Force on Political Practices was advantageous and should it be continued. **SEN. FOSTER** said absolutely and that Mr. Argenbright made a positive step by putting together this coalition of people who represented a wide range of interests.

SEN. COLE stated he felt the 10-day limit should be broadened.

SEN. FOSTER responded that prior to 10 days, a candidate typically has an opportunity to respond to a new issue, but within 10 days, it is extremely difficult for a candidate to respond to a new issue. **SEN. COLE** clarified that he was actually more concerned with including parties other than the candidate to be held responsible.

SEN. HARGROVE asked Ed Argenbright how many complaints were filed and how many sanctions were issued by the Office of the Commissioner of Political Practices. **Mr. Argenbright** stated that this last election cycle saw the greatest number of official complaints -- about 30. **Mr. Argenbright** stated that towards the end of the election cycle, their phone rings constantly with informal complaints -- approximately a couple hundred.

Mr. Argenbright said his office has a good deal of success correcting minor problems simply by making a phone call but, to his knowledge, there has never been a successful prosecution under the current criminal statute. To apply the standard of proof required of a criminal statute to prove that someone knowingly distorted, misrepresented, or made a false statement is very difficult. **Mr. Argenbright** made a recommendation for SB98

to allow the Commissioner to assess a civil penalty rather than a criminal penalty. SEN. HARGROVE asked Mr. Argenbright if the full legal redress was the only option available to the Commissioner rather than some form of a simple sanction. Mr. Argenbright stated that approximately 85% of candidates for the legislature sign the Code of Fair Campaign Practices. However, there are no sanctions for violating the tenants of that Code. Mr. Argenbright stated that during this last campaign, in most cases where a person alleged a violation on the part of someone else, the person alleging won the election. Mr. Argenbright said that is the bottom line, as long as the nasty attack mode wins elections, it will continue. There is also the issue of determining what voting record is misrepresented: the first, second, or the final vote?

SEN. WELDON said during the last session, he attempted to design a bill to change the jury selection list from registered voters to licensed drivers. SEN. WELDON asked Senator Foster who would provide the list of licensed drivers to the county. SEN. FOSTER stated he believed that information is available from the courthouse. SEN. WELDON said he thought it was the Department of Justice in Helena who maintains those lists, and the computer technology was apparently not available last session to easily provide this information. SEN. FOSTER said he believes the county and state computers are much more linked up now than they were two years ago.

SEN. WELDON asked Senator Foster what could be done about people who do not drive but want to serve on a jury. SEN. FOSTER said that is likely a small population. SEN. WELDON agreed but suggested there be a method for those people to voluntarily submit their name to the county for jury duty.

SEN. WELDON asked Senator Foster what would happen in the years of a presidential election. SEN. FOSTER said he did not view this as a problem, but SB98 could be amended to have an earlier primary in presidential election years. SEN. FOSTER stated he wanted to consider this question further.

SEN. WELDON addressed section 7 and that the word "misleading" is a subjective determination. SEN. WELDON discussed an example of what he would consider a statement to educate the public when in fact it would be construed by the opponent to be a misleading statement. SEN. FOSTER said that determination is the responsibility of the Commissioner of Political Practices.

CHAIRMAN HARDING stated she is aware of other states that hold a primary election in September. CHAIRMAN HARDING asked Mr. Throssel if the clerks would be amenable to work to change the time frames for those things to be accomplished prior to a primary. Mr. Throssel stated that the clerks would be willing to work with the various people involved but that there would need to be more items covered regarding the timing issues to move the date of the primary. CHAIRMAN HARDING asked about lines 27

through 30 on page 3 regarding the mailing of the ballot, and if there is split ticket voting, would both ballots be returned in one envelope whether it was marked or not. **Mr. Throssel** stated that detail issues such as this would likely be covered under SB30 which deals with allowing a split ticket vote in the primary.

CHAIRMAN HARDING asked Senator Foster if he would be amenable to working on section 7 since there have been so many concerns expressed. **SEN. FOSTER** said he would be happy to work to strengthen section 7 of SB98.

CHAIRMAN HARDING also asked Senator Foster about the primary date that concerns the clerks. **SEN. FOSTER** stated that he had talked with the Clerk in Broadwater County regarding these ideas, and she stated that the suggestion for an August primary (as Rep. Grinde's bill proposed) was not acceptable because that date would fall on the day before the county's budget hearing. However, she said a September primary would be workable.

SEN. BROOKE asked Senator Foster about section 1 and did it refer to appointed officials resigning from their particular appointments or just elected officials. **SEN. FOSTER** stated it was strictly for elected officials currently holding office.

Closing by Sponsor:

SEN. FOSTER said he is willing to work with Common Cause, or Commissioner Argenbright, or anyone else with ideas to strengthen SB98. If the goal is to dilute SB98, he would not be interested in amendments. In response to Mr. Motta's concerns regarding school elections and use of school funds, **SEN. FOSTER** said he believes there is a complaint being handled regarding the Missoula schools. **SEN. FOSTER** stated he is not sure when a decision will be made on those issues, but perhaps they could be addressed in SB98 at some point.

CHAIRMAN HARDING closed the Hearing on SB98.

TUESDAY
1-17-95

DATE _____

SEN:1995
wp.rollcall.man
CS-09

The initial meeting of the Citizens Task Force on Political Practices was held in Room 108 of the Capitol in Helena, Montana, at 9:30 a.m. on October 25, 1993.

All members were present:

Senator Robert J. "Bob" Brown	Whitefish
Representative Ervin Davis	Charlo
Joe Durso, Jr.	Missoula
Representative Mike Foster	Townsend
M. Susan Good	Great Falls
Don Holland	Rosebud
Patricia "Pat" Hunt	Helena
Fred Lark	Lewistown
Betty T. Lund	Hamilton
Vic Miller	Billings
Thelma J. Stiffarm	Box Elder
Senator Jeff Weldon	Arlee

Commissioner Ed Argenbright welcomed the members and thanked them for volunteering their time and expertise to serve on the committee. He then asked each member to briefly comment on their particular interests. Concerns expressed by committee members included:

- (1) the "archaic" methods the Commissioner's office is required to use because the computers are out-dated,
- (2) a lack of understanding regarding campaign practices on the part of the electronic media,
- (3) questions about specific ways to include the public in understanding the legal requirements in reporting campaign finances and the functions of the Commissioner's office,
- (4) a desire for more public participation in campaigns,
- (5) concern about the thin budget for the Commissioner's office, and
- (6) a frustration about the negative advertising that occurs just prior to the day of an election with no time for response on the part of the candidate who is the target of the negative advertising.

Commissioner Argenbright introduced his staff: Dulcy Hubbert and Donna Muffick, administrative assistants. He then introduced Jim Scheier, staff attorney from the Department of Justice, who, when requested by the Commissioner, serves as legal counsel for the office.

Steve Brown, attorney, former legislator, and an initial drafter of the legislation creating the Commissioner's office, explained to the committee the political environment during the time the office was created. He told the committee that during the period of 1972-1975, two events intensified public suspicion of

access computers in their communities. Ms. Lund said, in answer to a question, that most of the county clerks and recorders have computers. The committee agreed that computer-filing would initially have to be voluntary because even though larger campaigns may have sophisticated software programs, treasurers of local candidates and committees submit handwritten reports.

Mr. Durso thought that the Commissioner's office could charge a reasonable fee for filing that would generate some revenue. The committee discussed this and felt that money collected by the Commissioner's office should be retained by the office for operating expenses rather than going directly into the general fund. Those committee members who are also legislators told the other committee members that it may be difficult to do that because the legislative budget committees do not generally approve of earmarked revenue funds.

Mr. Durso expressed his agreement with Senator Weldon that Senate Bill 205 be implemented as an administrative change and felt the Commissioner was empowered to do so. After some discussion, the committee unanimously agreed.

Connie Erickson, a researcher from the Legislative Council, spoke to the committee about her work as it related to Question #3: What can be done to discourage last-minute negative campaign ads based on distortions and exaggerated claims.

She told the committee that House Joint Resolution 13 requested an interim study of campaign misrepresentations. The Legislative Council determined that it was not necessary to appoint a special committee to do the study and staff was assigned to conduct the study. However, as priorities were set and as staff changes occurred, this study was put on the back burner. Although she had only begun and her work has not been completed, she shared with the committee the research she had done to this point.

Regarding First Amendment issues, 26 states have statutes that deal with unfair campaign practices. Some have a fair campaign practice code but these are voluntary with no penalty. Twenty-one states have laws that prohibit false campaign statements and seven have laws that apply only to written false statements.

Ms. Erickson said case law is very sparse on this subject. She did, however, find two trends. The appellate courts are applying rules of strict construction. At the same time, courts are applying broad interpretations. This has created problems when attempts are made to force a broad interpretation into a narrow statute. She also found that courts are reluctant to overturn an election.

She told the committee that there were constitutional concerns about false statements and laws that include "knowingly." She

cited Vanesco v. Schwartz (1975) in which the action must conform to the actual malice standard, the intention that it is false or in reckless disregard of its truth or falsity. You must be sure to incorporate actual malice.

Representative Foster asked Ms. Erickson if she would provide committee members with copies of her presentation as well as the two articles she recently reviewed. Ms. Erickson agreed to do so.

Ms. Good said she would like to see a restriction that voting records could not be introduced into campaigns within ten days before the election. She felt the candidates had ample time from the previous legislative session through the months of campaigning to bring up any issues relating to the voting record of the incumbent and that it was unfair to interject voting records at the last minute. She told the committee that last-minute campaign issues by literature drop did not give the opposing candidate enough time to respond. She also pointed out that all TV and radio time is gone by this time so a timely response is impossible.

Ms. Hunt disagreed and said that the incumbent is being given another advantage that a challenger does not have. The incumbent has a voting record while the challenger has none. Mr. Durso expressed concern about any actions that could be perceived to be against free speech.

The committee discussed the advantages of an incumbent. Mr. Miller felt it was a problem of educating the public. Senator Brown suggested that the Republican and Democratic Central Committees could discuss this issue and that instead of cursing the darkness, one candle might be lit. The committee discussed the problem of any perceived political activity in connection with the Commissioner's office.

Senator Weldon thought the Commissioner's idea of designing public service announcements to run prior to the next election with high visibility individuals doing the spots would have a positive effect. Mr. Miller said he supports the idea. Mr. Holland agreed with the magnified effects of a statewide PSA series and said his experience with it is very positive.

The committee discussed the problem of abandoned campaign signs after the election was over and felt there should be some way this could be resolved.

The committee took a brief recess. Commissioner Argenbright told members of the committee that they would break into two groups to study the first two questions and the entire committee would study the third question. After members selected which of the first two questions they would like to study, the membership of the two committees are as follows:



State Members
WYN GAGE
CHAIRMAN
GARY C. AKLESTAD
MIKE HALLIGAN
LYNCH

House Members
RED MENAHAN
VICE CHAIRMAN
ERVIN DAVIS
H.S. HANSON
NORM WALLIN

Montana Legislative Council

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SENATE STATE ADMIN.

EXHIBIT NO. 2
DATE 01-17-95
BILL NO. SB98

October 28, 1993

TO: Ed Argenbright, Commissioner of Political Practices
FROM: Connie F. Erickson
RE: House Joint Resolution No. 13

Last session, the Legislature passed House Joint Resolution No. 13 (HJR 13), requesting the establishment of an interim committee to study solutions to misrepresentations that occur during political campaigns. Because the study was so narrowly focused, the Legislative Council decided not to create a separate interim committee just for this issue. Rather, the Council asked staff to conduct the study and report their findings and recommendations, if any, to the Council itself. In late August, the Council made some committee reassignments because of the loss of a staff member. As a result, the campaign misrepresentations study has been put on the "back burner" for the time being and quite possibly will not be completed.

What I am presenting to you in this memorandum is the initial research I was able to complete prior to the staff reassignments. I am glad to see that your task force will be addressing this issue, among others, so that the intent of HJR 13 will not be lost.

LAWS IN OTHER STATES

There are 26 states that have statutes dealing with unfair campaign practices, generally referred to as campaign falsity statutes. They cover such issues as disclosure, campaign literature, and dirty tricks. Nine states, including Montana, have a fair campaign practices code. Such a code is generally signed by candidates on a voluntary basis. There are no penalty provisions, and such provisions are not feasible as long as signing the code remains voluntary. Laws in 21 states prohibit false campaign statements. Some apply only to false incumbency designations. One state prohibits misrepresentations of political party support. Seven state prohibitions apply only to written false statements. Violations are generally misdemeanors.

Case law addressing campaign falsity statutes is sparse. In those few states that have developed a body of case law of any size, two trends are apparent. Appellate courts generally have applied a rule of strict construction to campaign falsity statutes but have taken a comparatively liberal attitude when examining the statements at issue in a case. The result is often a broad interpretation of the statement that places it outside the scope of the statute. Using this approach, courts have interpreted campaign falsity statutes as applying only to statements of fact. This often leads to the conclusion that the statements at issue are not false statements of fact, subject to statutory penalty. One reason for applying the rule of strict construction is the possibility of overturning an election, thus disenfranchising those who voted for the winner.

CAMPAIGN FALSITY STATUTES AND THE FIRST AMENDMENT

Campaign falsity statutes that regulate political speech raise immediate constitutional concerns, specifically the first amendment's freedom of speech guarantee. Any attempt by a state government to regulate protected political speech must withstand the most exacting constitutional scrutiny. However, in Garrison v. Louisiana (1964), Justice Brennan wrote, "That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. . . . Hence, the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection."

The leading case on the issue of campaign falsity statutes versus first amendment rights is Vanasco v. Schwartz (1975). In this decision, a U.S. District Court, later affirmed by the U.S. Supreme Court, struck down New York's campaign falsity statutes as unconstitutionally overbroad on their face. The statutes prohibited any deliberate misrepresentation of any candidate's qualifications, positions on issues, or party affiliation or endorsements. The statutes did not specify that the misrepresentations must be deliberate. In its findings, the District Court said that any state regulation of campaign speech must conform to the "actual malice" standard applicable to public figures under New York Times v. Sullivan (1964). (To be actual defamation, a statement must be made with knowledge that it is false or in reckless disregard of its truth or falsity.) However, Vanasco did reaffirm Garrison by recognizing that calculated falsehoods are not protected under the Constitution.

Since Vanasco, campaign falsity statutes have been invalidated in Ohio, Nebraska, and Louisiana. The Ohio and Louisiana decisions are on appeal. Nebraska repealed its statute. A similar statute in North Dakota was upheld by that state's Supreme Court because the statute did meet the actual malice standard mandated by New York Times.

Montana's campaign falsity statute (13-35-234, MCA) contains the wording ". . . a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not . . .". This would appear to satisfy the actual malice standard, so the statute might withstand a first amendment challenge. However, some legal scholars believe that Montana's prohibition against knowingly misrepresenting a voting record or position on public issues may be unconstitutionally overbroad and thus vulnerable to challenge.

It is my understanding that one of the issues that your task force will be addressing is that of last-minute negative campaigning. There is a Mississippi statute that prohibits the

making of any charges concerning a candidate's private life that reflect upon the candidate's honesty, integrity, or moral character, whether the charges are true or false, during the last 5 days before an election. It would appear that this statute is unconstitutional because it prohibits true statements from being made late in a campaign. An Alabama statute that prohibited electioneering on election day was challenged and held unconstitutional because it banned the free discussion of governmental and political affairs. It is understandable that a state would want to ensure that the electorate is not misinformed by last-minute attacks on candidates. However, it cannot outlaw protected speech in the process.

How then does a state address this issue of last-minute negative campaigning? Any campaign falsity statute must incorporate the actual malice standard, and the statute's sole objective should be the prohibition of calculated falsehoods that are constitutionally unprotected.

I hope that my comments will assist you in your deliberations. I cannot guarantee that I will be able to complete any more research. However, I will continue to gather information as time permits and will be happy to share it with you and the task force.

lao 3301cexa.

DATE 1-17-95

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: S.B. 94 -

S.B. 98 -

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ed Argenbright	Comm. Political Practices	98		
Darrell Beckstrom	Motor Vehicles	98	X	
Deborah Smith	Common Cause		P	
Laurie Korteik	Christian Coalition of MT	98	X	
RICHARD NOTTA	R. NOTTA	98	X	
Robert Throssell	MT Assoc. CL & Rec	54 98		X

VISITOR REGISTER

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By CHAIRMAN ETHEL HARDING, on February 18, 1995,
at 12:55 PM

ROLL CALL

Members Present:

Sen. Ethel M. Harding, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Don Hargrove (R)
Sen. Vivian M. Brooke (D)
Sen. Bob Pipinich (D)
Sen. Jeff Weldon (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: David Niss, Legislative Council
Gail Moser, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: N/A
Executive Action: SB 98 DO PASS AS AMENDED
SB 30 TABLED
SB 372 DO PASS AS AMENDED
SB 345 DO PASS
SB 363 TABLED
SB 357 DO PASS
SB 300 TABLED
SB 343 TABLED
SB 379 TABLED

{Tape: 1; Side: A; Approx. Counter: 52.5}

EXECUTIVE ACTION ON SB 98

Motion/Vote: SEN. MIKE FOSTER moved that SB 98 DO PASS AS
AMENDED. The MOTION CARRIED 5-3 on roll call vote.

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

02-18-95

[illegible]

SEN:1995
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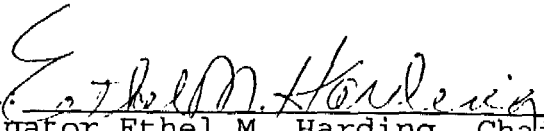
SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 20, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 98 (first reading copy -- white), respectfully report that SB '98 be amended as follows and as so amended do pass.

Signed.


Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, line 7.

Following: "UNLESS"

Insert: "THE CANDIDATE IS A MEMBER OF THE LEGISLATURE RUNNING FOR REELECTION TO THE SAME SEAT OR"

2. Title, lines 8 through 11.

Strike: "SUBSTITUTING" on line 8 through "ELECTION;" on line 11

3. Title, line 11.

Following: "CREATING THE"

Insert: "CIVIL"

4. Title, lines 11 AND 12.

Strike: "RAISING" on line 11 through "ELECTION" on line 12

Insert: "POLITICAL LIBEL"

5. Title, line 12.

Following: "3-15-402,"

Insert: "AND"

6. Title, line 13.

Strike: "13-1-107, 13-10-301, 13-13-214, AND 13-35-234,"

7. Page 2, lines 2 and 3.

Strike: "licensed drivers in the county who are 18 years of age or older"

Insert: "registered electors"

8. Page 2, line 4.

Following: "chapter."

Insert: "However, the officers may not include in the list the name of a person who has served as a juror within the previous 5 years."

9. Page 2, line 14.

Following: "term."



Insert: "This section does not prevent a member of the legislature from becoming a candidate for reelection to the same seat in the legislature."

10. Page 2, line 18 through line 21 on page 4.
Strike: sections 4 through 7 in their entirety

11. Page 4.

Following: line 21

Insert: "NEW SECTION. Section 4. Misrepresentation of voting record -- political civil libel. (1) It is unlawful for a person to willfully or negligently make or publish a false statement about a candidate's public voting record or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality. (2) It is unlawful for a person to willfully or negligently provide false information to a candidate concerning another candidate's public voting record when the person knows or should know that the information will be made public during the course of a campaign. (3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's willful or negligent conduct if the statement made by the person or the information provided to the candidate is false. (4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to \$1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 4]."

-END-

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE SAT 02-08-95 BILL NO. SB98 NUMBER _____
MOTION: SEN FOSTER MOVED SB98 DO PASS AS AMENDED

~~CA 5200~~ 53

[illegible]

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN RICHARD SIMPKINS, on March 8, 1995,
at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Joe Tropila (D)

Members Excused: Rep. Matt Denny (R)

Members Absent: none

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 98
Executive Action: HB 268

{Tape: 1; Side:A.}

HEARING ON SB 98

Opening Statement by Sponsor:

SEN. MIKE FOSTER, SD 20, stated this is a very important bill
concerned about campaign political practices. He referred to

this bill as the campaign reform integrity bill. There had been a lot of revisions from the Senate. They had appreciated his effort but they didn't like the idea of the first part of the bill. He stated there are only two sections of the bill left. The first section dealt with why people are not registered to vote. He stated he was tired of hearing that people weren't registered to vote because they didn't want to serve for jury duty. This bill would take away that excuse for people. Some states select people for jury duty from driver's licenses. He stated he had received a lot of opposition to this idea and it was amended out. He stated they had tried to give the people a break from jury duty requiring them to only serve once every five years. The Senate had thought his idea was good but they weren't sure how it was going to work. The committee could either fix that portion of the bill or get rid of it entirely. He said the reason for this part of the bill was to get more people registered to vote.

The second part of the bill dealt with political opponents. Not all political opponents were as scrupulous as they could be. He said many make unfounded attacks, they were dishonest and didn't have enough integrity. These attacks put the other candidates in difficult positions which they can't always respond to in time. He gave a personal example and submitted **EXHIBIT 1**. He stated there often isn't a way to respond to a last minute "sneak attack." This bill is an important one to all candidates. There needs to be a message sent to these people telling them that it is wrong for them to do things like this.

He stated they also need to do something to clean up the campaigns. This bill would make it unlawful for a person, individual, candidate, or an organization to do those things. He stated another change in the bill is changing the word "knowingly" to "willfully or negligently." The use of the word "knowingly" implies there is a burden of proof. It is very difficult to prove a person did something knowingly. By changing the bill, it would give the commissioner's office more "teeth" to deal with dirty campaign practices.

Another change to the bill is the change to a civil action. He stated under current law these acts are criminal actions and there is a burden of proof to that as well. He stated by changing it to a civil action there is more that they will be able to do when prosecuting the violators. He stated as the law currently reads, the commissioner's hands are tied when it comes to bringing charges against individuals. This bill might not be a cure-all, but it is a step in the right direction. He urged the committee's support of the bill.

Proponents' Testimony:

Ed Argenbright, Commissioner of Political Practices, stated there had been an 80% increase in complaints during the last election. The majority of the complaints dealt with the criminal libel

statute. He stated one of the most important changes in the bill dealt with changing the penalty to a civil one and also with changing the wording in the statute to say "willingly or negligently." In the second part of the bill, it makes clear the definition of what is fair. He urged the committee's favorable recommendation of the bill.

Debbie Smith, Common Cause, Helena Attorney, stated they had made substantial improvements in the bill from its original form. The original bill wouldn't have given the commissioner the authority he needs. This section would ensure integrity for campaign practices. She encouraged the committee to give the bill a do pass vote.

J. V. Bennett, MontPIRG, stated they were concerned about government and this bill would provide comfort to those concerns. He stated this would also allow for a penalty for lying. He urged a do pass recommendation.

Opponents' Testimony:

Bob Gilbert, Montana Magistrate Association, Montana Association of Clerk of District Court, stated it is sad that the issue with jury duty happens. They had some real concerns about how this idea would work, if they would remove the names from the list to have them put on again in the future, how it would affect the jury pool, what would be considered as serving on the jury. In small counties, if they only had to serve once every five years, that could exhaust the jury pool and there would be no one left to serve on the jury. He stated these issues needed to be addressed and there were things that needed to be defined in the bill before they would speak in favor of the bill. They had no problem with the amendments that were going to be introduced. He said if they aren't part of the solution, they were part of the problem.

Robert Throssell, Montana Association of Clerk and Recorders, stated they had the same concerns. There had been some concern about the small communities that might run out of jurors and they didn't know who would serve on the jury if that were to happen. He offered an amendment to the bill. **EXHIBIT 2**

Informational Testimony: none

Questions From Committee Members and Responses:

REP. GALVIN asked in reference to the commissioner and the county attorney, if they had the same authority as far as bringing suit.

Mr. Argenbright stated they do have the same authority to bring civil action in some cases, but not in political criminal libel cases. He stated the commissioner's office would present the evidence to the county attorney and he could then pursue the matter or defer it back to the commissioner.

REP. GALVIN asked if the commissioner had the end authority.

Mr. Argenbright stated this bill would make it a requirement to bring civil action against a person who was in violation.

REP. GALVIN asked how many jury trials are held on average in small counties.

Mr. Throssell stated it depended on the county and varied year to year.

{Tape: 1; Side: B.}

REP. GALVIN stated he thought it was strange that doing nothing makes the problem go away. He asked if the problem would simply disappear if they did nothing about it.

Mr. Throssell stated this bill didn't solve the problem. He stated this doesn't make the problem disappear. Some people may not want to reregister.

REP. STOVALL asked how they would be able to assess the \$1,000 fine.

Mr. Argenbright explained this bill would not give the authority to assess the fine. The court would determine the fine. If they had the authority, he would assess the fine depending on a number of things administratively through his office.

REP. SQUIRES asked if they take the complaint to the commissioner's office to determine if there is enough evidence to go through the suit process.

SEN. FOSTER stated this bill gives the commissioner's office the teeth to address the concerns she was talking about.

REP. SQUIRES asked what he would do in this situation.

Mr. Argenbright stated under current statute complaints are filed and reviewed. To prove a person did something knowingly is hard to prove. He stated this bill with its changes gives the definition for basis of determination. He stated this is a judgmental issue.

REP. SQUIRES asked what would happen to those people who were found guilty. She asked if they would only be given a fine.

Mr. Argenbright stated with civil liability they would only be given a fine.

REP. SQUIRES asked what would happen to a national organization that misrepresented a person or a group.

Mr. Argenbright stated the person or organization that had provided the information would be subject to complaint and possible civil action taken against them.

REP. MARTINEZ asked if every person had the right to vote.

SEN. FOSTER stated that was correct.

REP. MARTINEZ asked why they should change the law to make people vote. She stated it is every person's right to vote and some people choose not to. She stated she didn't think it was right to make people vote.

SEN. FOSTER stated he had grown tired of people he had talked to during the campaign stating the reason they weren't registered to vote was because they didn't want to serve on a jury.

REP. HEAVY RUNNER asked if it would alleviate some of the concern if they inserted the driver's license portion of the bill back in.

SEN. FOSTER stated he agreed with what he was saying, but he had received many complaints about that portion of the bill in the beginning.

REP. BRAINARD asked if the language on line 7 was still appropriate and if that would eliminate the need for the rest of the language.

Mr. Throssell stated the rest of the language is to order jurors for the pool.

CHAIRMAN SIMPKINS asked if a person who is not a Montana resident could get a driver's license for the state of Montana.

SEN. FOSTER stated he didn't know.

CHAIRMAN SIMPKINS stated they could. He then asked how they would address the situation of having the non-resident license holders come up on the jury lists.

SEN. FOSTER stated he didn't know how they would be able to address that. He stated perhaps they could flag them on the computer so that they wouldn't have to serve on the jury.

Closing by Sponsor:

SEN. FOSTER stated what he had intended with the first part of the bill was that they would have to actually sit on the jury in order to be exempt for the next five years. He stated it amazed him that the clerk would say that this would decimate the jury pool. They thought the status quo was fine when in actuality it is not working. He stated he would like to see them put in their ideas for improving this bill, not to have them stand around and

complain about everything that was wrong about it and how it would never work. He stated he was not trying to cause problems by introducing this bill, he was trying to solve the problems. He stated on page 4 at the bottom it talks about character and morality. He stated some campaigns comment on the character and morality. He thought this was a good bill and urged the committee's support of the bill.

CHAIR TO REP. DORE SCHWINDEN

EXECUTIVE ACTION ON HB 268

Discussion:

Lois Menzies, Director, Department of Administration, stated they had listened to the concerns of the committee about the neutralization of financial impact on local government and school districts. She stated they then went back and rewrote the bill to eliminate costs without reducing the general fund support to the bill. She said they were able to do so by reducing the GABA to 1.5% instead of 2% and they also redefined the current compensation in the Teachers' Retirement System and the Public Employees' Retirement System. She stated they had discussed, reviewed, and approved this with the Governor. She urged the committee's support.

{Tape: 2; Side: A.}

Linda King, Public Employees Retirement System, submitted written testimony. **EXHIBIT 3**

David Senn, Executive Director, Teachers Retirement System, stated the first amendment had to deal with the statement of intent. He stated they wanted to make it clear that the current compensation is for the funding of the GABA bill. They wanted to capture the value of member contributions. He stated they will capture dollar amounts for the compensation. They won't be reported in the future so they can't be used for retirement benefits. This will give recognition to what has been contributed. They recognize there will be savings, and if employers have the means and want to provide additional benefits, there is a section to cover this. He stated the second part of the amendments were to change the definition of contribution to include only the base contract amount. The third change is to change the definition of earned compensation. He went on to explain the other changes in the bill due to the amendments which were mostly striking and inserting better language.

V.C. SCHWINDEN submitted letters from the university system in regard to the amendments into the record. **EXHIBIT 4**

REP. BRAINARD stated they are looking at further increases. He asked if they would catch the increases actuarially.

HOUSE OF REPRESENTATIVES

State Administration

ROLL CALL

DATE March 8, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority			✓
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard	✓		
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez	✓		
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires	✓		
Rep. Lila Taylor	✓		
Rep. Joe Tropila	✓		

CITIZENS TASK FORCE ON POLITICAL PRACTICES

The initial meeting of the Citizens Task Force on Political Practices was held in Room 108 of the Capitol in Helena, Montana, at 9:30 a.m. on October 25, 1993.

All members were present:

Senator Robert J. "Bob" Brown	Whitefish
Representative Ervin Davis	Charlo
Joe Durso, Jr.	Missoula
Representative Mike Foster	Townsend
M. Susan Good	Great Falls
Don Holland	Rosebud
Patricia "Pat" Hunt	Helena
Fred Lark	Lewistown
Betty T. Lund	Hamilton
Vic Miller	Billings
Thelma J. Stiffarm	Box Elder
Senator Jeff Weldon	Arlee

Commissioner Ed Argenbright welcomed the members and thanked them for volunteering their time and expertise to serve on the committee. He then asked each member to briefly comment on their particular interests. Concerns expressed by committee members included:

- (1) the "archaic" methods the Commissioner's office is required to use because the computers are out-dated,
- (2) a lack of understanding regarding campaign practices on the part of the electronic media,
- (3) questions about specific ways to include the public in understanding the legal requirements in reporting campaign finances and the functions of the Commissioner's office,
- (4) a desire for more public participation in campaigns,
- (5) concern about the thin budget for the Commissioner's office, and
- (6) a frustration about the negative advertising that occurs just prior to the day of an election with no time for response on the part of the candidate who is the target of the negative advertising.

Commissioner Argenbright introduced his staff: Dulcy Hubbert and Donna Muffick, administrative assistants. He then introduced Jim Scheier, staff attorney from the Department of Justice, who, when requested by the Commissioner, serves as legal counsel for the office.

Steve Brown, attorney, former legislator, and an initial drafter of the legislation creating the Commissioner's office, explained to the committee the political environment during the time the office was created. He told the committee that during the period of 1972-1975, two events intensified public suspicion of

access computers in their communities. Ms. Lund said, in answer to a question, that most of the county clerks and recorders have computers. The committee agreed that computer-filing would initially have to be voluntary because even though larger campaigns may have sophisticated software programs, treasurers of local candidates and committees submit handwritten reports.

Mr. Durso thought that the Commissioner's office could charge a reasonable fee for filing that would generate some revenue. The committee discussed this and felt that money collected by the Commissioner's office should be retained by the office for operating expenses rather than going directly into the general fund. Those committee members who are also legislators told the other committee members that it may be difficult to do that because the legislative budget committees do not generally approve of earmarked revenue funds.

Mr. Durso expressed his agreement with Senator Weldon that Senate Bill 205 be implemented as an administrative change and felt the Commissioner was empowered to do so. After some discussion, the committee unanimously agreed.

Connie Erickson, a researcher from the Legislative Council, spoke to the committee about her work as it related to Question #3: What can be done to discourage last-minute negative campaign ads based on distortions and exaggerated claims.

She told the committee that House Joint Resolution 13 requested an interim study of campaign misrepresentations. The Legislative Council determined that it was not necessary to appoint a special committee to do the study and staff was assigned to conduct the study. However, as priorities were set and as staff changes occurred, this study was put on the back burner. Although she had only begun and her work has not been completed, she shared with the committee the research she had done to this point.

Regarding First Amendment issues, 26 states have statutes that deal with unfair campaign practices. Some have a fair campaign practice code but these are voluntary with no penalty. Twenty-one states have laws that prohibit false campaign statements and seven have laws that apply only to written false statements.

Ms. Erickson said case law is very sparse on this subject. She did, however, find two trends. The appellate courts are applying rules of strict construction. At the same time, courts are applying broad interpretations. This has created problems when attempts are made to force a broad interpretation into a narrow statute. She also found that courts are reluctant to overturn an election.

She told the committee that there were constitutional concerns about false statements and laws that include "knowingly." She

cited Vanesco v. Schwartz (1975) in which the action must conform to the actual malice standard, the intention that it is false or in reckless disregard of its truth or falsity. You must be sure to incorporate actual malice.

Representative Foster asked Ms. Erickson if she would provide committee members with copies of her presentation as well as the two articles she recently reviewed. Ms. Erickson agreed to do so.

Ms. Good said she would like to see a restriction that voting records could not be introduced into campaigns within ten days before the election. She felt the candidates had ample time from the previous legislative session through the months of campaigning to bring up any issues relating to the voting record of the incumbent and that it was unfair to interject voting records at the last minute. She told the committee that last-minute campaign issues by literature drop did not give the opposing candidate enough time to respond. She also pointed out that all TV and radio time is gone by this time so a timely response is impossible.

Ms. Hunt disagreed and said that the incumbent is being given another advantage that a challenger does not have. The incumbent has a voting record while the challenger has none. Mr. Durso expressed concern about any actions that could be perceived to be against free speech.

The committee discussed the advantages of an incumbent. Mr. Miller felt it was a problem of educating the public. Senator Brown suggested that the Republican and Democratic Central Committees could discuss this issue and that instead of cursing the darkness, one candle might be lit. The committee discussed the problem of any perceived political activity in connection with the Commissioner's office.

Senator Weldon thought the Commissioner's idea of designing public service announcements to run prior to the next election with high visibility individuals doing the spots would have a positive effect. Mr. Miller said he supports the idea. Mr. Holland agreed with the magnified effects of a statewide PSA series and said his experience with it is very positive.

The committee discussed the problem of abandoned campaign signs after the election was over and felt there should be some way this could be resolved.

The committee took a brief recess. Commissioner Argenbright told members of the committee that they would break into two groups to study the first two questions and the entire committee would study the third question. After members selected which of the first two questions they would like to study, the membership of the two committees are as follows:

AMENDMENT TO SENATE BILL 98

OFFERED BY THE MONTANA ASSOCIATION OF CLERKS AND RECORDERS

PREPARED BY ROBERT R. THROSSELL
MARCH 8, 1995

1. Page 2, line 6

Following: "chapter."

Strike: "HOWEVER, THE OFFICERS MAY NOT INCLUDE IN THE LIST THE NAME OF A PERSON WHO HAS SERVED AS A JUROR WITHIN THE PREVIOUS 5 YEARS."

Insert: " A person who has served as a juror in district court within the previous 5 years may request to be excused from jury duty."

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

State Administration

COMMITTEE

DATE March 8, 1978

BILL NO. SB98

SPONSOR(S) Foster

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Deborah Smith	Common Cause	X-only on Sec. 2. No position on remainder.	
Bob Gilbert	MT. MAGISTRATES ASSN MT Ass Clerk of D. Court		Sec. 1 only X
J.V. Bennett	Mont PIRG	X-sec. 2 No position on remainder	
Ed Argenbright	Com. Pol Pr.	X-sec. 2	
Robert Throssell	MT Ass Clerk & Rec		X-sec 1

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

REP. TAYLOR stated if the hearing on the bill wasn't fair in this committee it would be a fair hearing in the Senate if it makes it.

REP. KITZENBERG stated one of his concerns was the lack of representation in eastern Montana. He had changed his mind on that because he found out that these people don't always stay in that district, they move. He stated another reason he changed his mind was because of the co-ops in eastern Montana. He had done some studying on economic development and often utility rates enter into the economic development. This bill gives a sense of fairness and balance and three people can do the job and hold down rates.

CHAIRMAN SIMPKINS stated as of 8:30 a.m. on March 13, 1995 the bill was posted for a meeting at 8:00 a.m. on March 15, 1995. He stated in the House of Representatives there wasn't an advance notice rule and there had been ample advance notice for the hearing.

REP. STOVALL stated he supported the bill. He thought it was a good move for streamlining government and it was good to look at the facts not the politics when dealing with this office.

CHAIRMAN SIMPKINS stated he had greater faith in the form of government than was stated previously. He stated there are many checks and balances in the system and there would be no way to have a Governor like Hitler. He stated there are different views but they were elected to use their best judgment and that was what he was here to do.

Vote: Motion carried 11-7 with REP. SCHWINDEN, REP. BRAINARD, REP. GALVIN, REP. HAGENER, REP. HEAVY RUNNER, REP. SQUIRES, and REP. TROPILA voting no. REP. SCHWINDEN voted by proxy.

EXECUTIVE ACTION ON SB 98

Motion: REP. HEAVY RUNNER MOVED SB 98 BE CONCURRED IN.

Discussion:

Ms. Heffelfinger briefly explained the bill for the committee.

REP. GALVIN asked who decides what a person's character or morality is. He asked if it is necessary to put this in law.

CHAIRMAN SIMPKINS stated any judge is the one to make that decision. He stated that was a judgment factor and is left up to the judges to decide.

REP. SUSAN SMITH stated the key word is false. Any statement that is false should not be said. What isn't true isn't true.

REP. DENNY stated it could be anything. If a person makes a false statement this bill would make it illegal. If it is true it is left up to the judgment of the voters to decide.

REP. REHBEIN asked if this would be referring to not calling a thief a thief unless he was a thief.

CHAIRMAN SIMPKINS stated that was true.

REP. MASOLO asked if this was in many different laws.

{Tape: 2; Side: A.}

Ms. Heffelfinger stated she didn't know if there were many laws with this in it. She stated the false statement is the issue and she couldn't comment on how many laws had this in the statute.

REP. DENNY stated they were talking about the false statements made by different people. Hopefully, this bill will help to stifle some of the false accusations.

REP. GREEN stated the key word is false; if it is true they would be able to tell it. If it wasn't, they shouldn't say a thing.

REP. SMITH stated she had a concern with part of the bill that she thought was going to be taken out.

REP. HEAVY RUNNER stated if this bill is passed and there are problems with it, they could be dealt with during the next session.

Motion: REP. TROPILA MOVED THE AMENDMENT.

Discussion:

Ms. Heffelfinger stated they were unable to amend the bill in that way because it was not within the scope of the title.

REP. TROPILA asked if they would be able to strike lines 6 and 7 of the bill.

Ms. Heffelfinger stated he would be able to strike the wording but wouldn't be able to replace the wording with what was proposed by REP. BRAINARD.

REP. TROPILA WITHDREW HIS MOTION.

Motion: CHAIRMAN SIMPKINS MOVED HIS AMENDMENT.

Discussion:

Ms. Heffelfinger explained the amendment.

REP. SMITH asked if this would create a system where the Clerk and Recorders would have to keep another list to regulate.

REP. DENNY stated originally it was amended in the Senate and they weren't able to do this because it wasn't within the scope of the bill.

Ms. Heffelfinger stated the issue was that there was an exception to the amendment. That was the reason why they couldn't amend the bill in the way they had wanted to.

CHAIRMAN SIMPKINS stated there were two issues the committee needed to look at. One was the issue of jury duty and the other was civil penalties. He stated this would be creating a complex situation to keep the lists for the Clerks and Recorders.

REP. TROPILA stated this would, in fact, be creating a problem for them to do this.

REP. STOVALL stated they should take everything out dealing with the juries.

REP. MASOLO thought the bill should be amended to leave this out and the jury issue should be researched and addressed next time.

REP. GALVIN stated he didn't see how doing nothing solves the problem. He asked if the problem simply disappears. He stated that was something for the committee to consider.

REP. STOVALL stated he didn't think jury duty should be a problem because if the person gave the judge a legitimate excuse they would be excused from duty.

REP. MASOLO stated she disagreed. It is a problem and it is harder to get off jury duty than it used to be.

REP> GREEN stated he had sat on several juries and he hated to think people that had nothing better to do were the ones sitting on the juries.

REP. HEAVY RUNNER stated this was not the best time to address the issue but it did need to be dealt with and worked out.

REP. SMITH asked if there were lists of people that lived in the counties that they would be able to use for these juries.

CHAIRMAN SIMPKINS stated the law states that they must be registered voters in order to serve on a jury. He stated they could strike registered electors and use residents.

REP. TAYLOR asked if they amended that section out of the bill if it would go back to the Senate committee.

REP. SIMPKINS WITHDREW HIS AMENDMENT.

REP. BRAINARD stated the new section of the bill had been added after the bill had been introduced.

Motion/Vote: REP. HAGENER MOVED TO AMEND THE BILL STRIKING SECTION ONE IN ITS ENTIRETY. Motion carried 15-2 with REP. REHBEIN and REP. GALVIN voting no and REP. SCHWINDEN excused and REP. SQUIRES voting by proxy.

Motion: REP. STOVALL MOVED SB 98 BE CONCURRED IN AS AMENDED.

Vote: Motion carried 17-1 with REP. GALVIN voting no and REP. SCHWINDEN and REP. SQUIRES voting by proxy.

EXECUTIVE ACTION ON SB 193

Motion: REP. TROPILA MOVED SB 193 BE CONCURRED IN.

Discussion:

Ms. Heffelfinger gave a synopsis of the bill.

Rep. TROPILA stated there are many small district elections and the people had asked why they wouldn't consolidate them and have them at the same time as other elections. This bill does that when it is possible for the elections to be combined and held at the same time.

REP. MASOLO stated the Clerks and Recorders are for the bill.

CHAIRMAN SIMPKINS stated this would cut the cost of elections and mail ballots would still be an option.

Vote: Motion carried 18-0 with REP. SCHWINDEN and REP. SQUIRES voting by proxy.

EXECUTIVE ACTION ON SB 324

Motion: REP. HAGENER MOVED SB 324 BE CONCURRED IN.

Motion/Vote: REP. MASOLO MOVED THE AMENDMENT. Motion carried 18-0 with REP. SCHWINDEN and REP. SQUIRES voting by proxy.

Motion/Vote: REP. DENNY MOVED SB 324 BE CONCURRED IN AS AMENDED. Motion carried 18-0 with REP. SCHWINDEN and REP. SQUIRES voting by proxy.

HOUSE OF REPRESENTATIVES

State Administration

ROLL CALL

DATE March 20, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority	✓		
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard	✓		
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez	✓		
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires	✓		
Rep. Lila Taylor	✓		
Rep. Joe Tropila	✓		



HOUSE STANDING COMMITTEE REPORT

March 20, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 98 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

Carried by: Rep. Simpkins

And, that such amendments read:

1. Title, lines 4 and 5.
Strike: "GENERALLY" on line 4 through "ELECTIONS;" on line 5
2. Title, line 12.
Following: "ELECTIONS,"
Insert: "AND"
3. Title, line 13.
Strike: "; AND AMENDING"
4. Title, line 14.
Strike: "SECTION"
Strike: "3-15-402,"
Strike: "MCA"
5. Page 2, lines 1 through 11.
Strike: Section 1 in its entirety
Renumber: subsequent sections
6. Page 5, lines 16 and 18.
Strike: "2"
Insert: "1"

-END-

Committee Vote:
Yes 17, No 1.

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE March 20, 1995 BILL NO. SB NUMBER 98

MOTION: Rep. Stovall moved do concur as amended

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority <i>By Proxy</i>	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard	✓	
Rep. Pat Galvin		✓
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires <i>By Proxy</i>	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE March 20, 1995 BILL NO. SB NUMBER 98

MOTION: Rep. Hagner moved to strike section one.

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority <i>By Proxy</i>	amended	
Rep. Matt Brainard	✓	
Rep. Pat Galvin		✓
Rep. Dick Green	✓	
Rep. Toni Hagner	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein		✓
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires <i>By Proxy</i>	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	